



PATENT
DOCKET NO.: 201040/1020

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants	:	Alam et al.)	Examiner:
)	Holly Schnizer
Serial No.	:	09/455,978)	
)	Art Unit:
Cnfrm. No.	:	5811)	1656
)	
Filed	:	December 6, 1999)	
)	
For	:	HEME PROTEINS HEMAT-HS AND)	
		HEMAT-BS AND THEIR USE IN MEDICINE))	
		AND MICROSENSORS)	

PETITION TO REVIVE UNINTENTIONALLY ABANDONED APPLICATION
UNDER 37 C.F.R. § 1.137(b)

Mail Stop: Petition

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicants hereby petition to revive the above-identified application pursuant to 37 C.F.R. § 1.137(b).

The outstanding office action was mailed on July 1, 2005. Therefore, the statutorily shortened period for reply was October 1, 2005, and the statutory deadline, given the weekend and holiday, was on January 3, 2006.

Although applicants' representatives contacted the U.S. PTO to cancel by examiner's amendment all non-allowed claims, the examiner informed applicants' representatives that a new basis of rejection would preclude allowance of the application (despite prior allowability of the claims). Instead the PTO proposed claims that would be allowable, but the PTO refused to withdraw finality and issue a new office action. Applicants were therefore forced to file a Notice of Appeal.

On January 3, 2006, the undersigned attempted to file a Notice of Appeal and Three-Month extension of time along with a transmittal letter and facsimile cover page

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identifying the present application. A copy of all pages that the undersigned transmitted on January 3, 2006 is attached as Exhibit 1. The facsimile machine confirmed delivery of the four pages (see Exhibit 2) and the undersigned believed the Notice of Appeal and Extension of Time had been filed. (Our records do not indicate that a confirmation was received from the PTO.)

On January 25, 2006, applicants' representatives contacted Examiner Schnizer to accept the proposed claims and the Examiner informed applicants' representatives that the Notice of Appeal had not been received.

On the basis of the foregoing facts, applicants submit that the entire period of delay (until filing of this grantable petition) was unintentional. This complies with 37 C.F.R. § 1.137(b)(3). Satisfying 37 C.F.R. § 1.137(b)(1), enclosed herewith is a newly executed Notice of Appeal. Enclosed herewith is a check to cover the \$750 petition fee required under 37 C.F.R. § 1.17(m) and the \$250 Notice of Appeal fee. The PTO is hereby authorized to charge Deposit Account 14-1138 for any additional fees, or credit the deposit account for any overpayment. This satisfies the requirement of 37 C.F.R. § 1.137(b)(2). No terminal disclaimer is required.

Because all of the requirements of 37 C.F.R. § 1.137(b) have been met, applicants respectfully request revival of the above-identified application.

If any additional information is required, the undersigned attorney respectfully requests that the PTO contact him directly.

Respectfully submitted,

Dated: January 27, 2006


Edwin V. Merkel
Registration No. 40,087

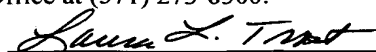
NIXON PEABODY LLP
Clinton Square, P. O. Box 31051
Rochester, New York 14603-1051
Telephone: (585) 263-1128
Facsimile: (585) 263-1600

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

- ☒ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450
- ☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

1/27/06
Date


Signature

Laura L. Trost
Type or Print Name

Nixon Peabody LLP
Attorneys at Law

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P.O. Box 31051
Rochester, New York 14603-1051
(585) 263-1000

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INTERNATIONAL PHONE NUMBERS MUST INCLUDE COUNTRY & CITY CODE. SEE LOCAL WHITE PAGES FOR CODES NEEDED.

From: Edwin V. Merkel	Date: January 3, 2006	No. of Pages: 4 (including this page)	
Comments: Application S/N 455, 978 Transmittal Form Notice of Appeal/Request for Three Month Extension of Time			

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		AND MICROSENSORS)	

NOTICE OF APPEAL
AND
REQUEST FOR EXTENSION OF TIME FOR THIRD MONTH

Mail Stop: AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicants hereby appeal to the Board of Patent Appeals and Interferences from the Primary Examiner's decision dated July 1, 2005, finally rejecting claims 48, 49, and 54 as identified in the December 5, 2005, Advisory Action. (Claims 1, 11, 66, 67, and 74-83 have been identified as allowed.)

Applicants hereby request an additional extension of time of two months from the due date of October 1, 2005. A one-month extension of time fee (\$60.00) was submitted with the Amendment Under 37 CFR § 1.116 filed on November 1, 2005. The fee for a three-month extension of time is \$510.00. Accordingly, the Commissioner is authorized to charge the \$450.00 extension of time fee for the additional two months (three-month extension of time fee minus amount paid for the one-month extension of time).

The Commissioner is authorized to charge the \$250 appeal fee to Deposit Account No. 14-1138. Please charge any additional fees which may be required or credit any overpayment to Deposit Account No. 14-1138. A duplicate copy of this form is attached.

Respectfully submitted,

Dated: January 3, 2006

Edwin V. Merkel
Edwin V. Merkel
Registration No. 40,087

NIXON PEABODY LLP
Clinton Square, P. O. Box 31051
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Jan. 3, 2006
Date

Edwin V. Merkel
Signature

Edwin V. Merkel
Type or Print Name

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-NIXON, PEABODY 10TH -

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